

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

Gopi Lal
Vs.
Union of India & Ors.

S.B. CIVIL WRIT PETITION NO.6067/2005.

Date of Order : 20/8/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Lokesh Sharma for the petitioner.
Shri Sushil Kumar Sharma for Union of India.
Shri J.K. Agrawal, Additional Government Advocate
for the State.

BY THE COURT:-

Heard learned counsel for the parties.

The petitioner has challenged the order dated 4/1/2004 whereby his revision petition filed against the order of the State Government dated 22/1/1992 cancelling the lease-deed of the petitioner has been rejected as time barred. The order dated 22/1/1992 was passed by the State Government by which the lease deed of the petitioner which was valid for the period from 16/2/1984 to 15/2/2004 was cancelled. The petitioner filed suit for declaration on 13/3/1992. Along with the suit,

the petitioner also filed an application for temporary injunction under Order 39 Rules 1 & 2 CPC. The said application was allowed by the trial court and a direction for maintaining status-quo was issued. In the suit, defendant-respondent filed application under Order 7 Rule 11 CPC on the premise that since during the pendency of the suit the original term of the lease itself was expired on 15/2/2004 therefore, the suit would not be maintainable and is liable to be rejected. The learned trial court vide order dated 19/4/2005 allowed the application of the defendant-respondent filed under Order 7 Rule 11 CPC and dismissed the suit. The first appeal filed against that the said order dated 19/4/2005 was also dismissed vide order dated 17/5/2005 and thereafter second appeal was also rejected by this Court vide order dated 2/6/2005.

While dismissing the second appeal, the co-ordinate Bench of this Court held that "this court has on occasions more than one held that suit in respect of cancellation of lease is not maintainable

in a civil court and the remedy is under the provisions of the Act and Rules." Faced with this situation, petitioner at that stage preferred revision petition before the Central Government. The petitioner conscious of the fact that revision petition filed at that stage would be time barred, also filed an application under Section 5 read with Article 14 of the Indian Limitation Act, 1963 (in short, "Act of 1963) and proviso to Rule 54 of the Minor Mineral Concession Rules, 1960 (in short, "Rules of 1960) seeking condonation of delay. The Central Government however rejected the revision petition as time barred. Hence, this writ petition.

Shri Lokesh Sharma, learned counsel for the petitioner argued that the petitioner had timely taken steps in filing civil suit immediately after his lease-deed was cancelled by the State Government on 22/1/1992. The suit was filed on 13/3/1992. If the suit was not decided within time or had remained pending till the time the validity of lease expired, he cannot be blamed. It was submitted that if the adjudication of the suit had been made on merits of

the case and the order passed by the State Government terminating the lease would have been held illegal, the petitioner would be entitled to apply for renewal of the lease. In fact, he did apply for renewal of the lease. The respondent-State however did not accede to his prayer. This Court while dismissing the second appeal observed that the remedy in such matters was available only under the relevant rules. It was on that basis that petitioner filed revision petition with which he also filed an application seeking condonation of delay. He invoked provisions of Section 5 r/w. Article 14 of the Act of 1963 for bonafide pursuing the remedy of civil suit therefore he has a right to secure a judgment on merits of the case whether from the court or from the departmental authorities.

Shri J.K. Agrawal, learned Additional Government Advocate and Shri Sushil Kumar Sharma, learned Standing Counsel for Union of India have opposed the writ petition and argued that in the matter of this nature where the lease deed was cancelled as per order dated 22/1/1992, revision

petition cannot be entertained at this belated stage. They therefore prayed that the writ petition be dismissed.

Having heard learned counsel for the parties and perused the material on record, I find that although the lease-deed of the petitioner was cancelled on 22/1/1992 but it was valid till 15/2/2004 and the petitioner indeed approached the civil court immediately after cancellation of the lease-deed on 13/3/1992. The respondents contested the matter before the civil court and the matter remained pending for quite some time. However when the term of lease-deed expired, the respondents came out with an application under Order 7 Rule 11 CPC raising objection about the maintainability of the suit because of the expiry of the term of lease-deed itself. In fact, the written statement filed by the petitioner also clearly indicate that an objection was raised by the respondents about the maintainability of the suit on the ground that petitioner had alternative remedy in the administrative set up itself. It was in that context

that this Court while dismissing the second appeal of the petitioner observed that in the matters like this, it is always appropriate to relegate the parties to avail remedies. Apart from above, Section 5 of the Limitation Act and proviso to Rule 54 of the Rules of 1960 provide for condonation of delay on sufficient cause being shown, the petitioner also invoked Section 14 of the Act of 1963 according to which if a litigant was bonafide pursuing a remedy other than the one which he now seeks to avail, that would be a valid ground for condonation of delay. In the present case, the resultant situation after the rejection of the civil suit of the petitioner is that he has now no remedy to get the validity of the order cancelling his lease deed and refusing to renew the same examined. In the circumstances therefore, it would be appropriate that respondent-Central Government shall decide the revision petition filed by the petitioner on merits rather than non-suiting the petition on technical ground of delay alone. Above referred background of the case would clearly indicate that the petitioner on

sufficient cause had timely approached the Central Government by filing a revision petition.

In view of what has been discussed above, the writ petition is allowed. The order dated 4/1/2004 (Annexure5) passed by respondent No.1 is set-aside and revision petition is remitted back for decision on merits as expeditiously as possible but not later than six months from the date of production of certified copy of this order before that authority.

(MOHAMMAD RAFIQ), J.

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